United Nations A/HRC/32/47

General Assembly

Distr.: General
9 May 2016

Original: English

Human Rights Council
Thirty-second session
Agenda item 4
Human rights situations that require the Council's attention

Report of the commission of inquiry on human rights in Eritrea*, **

Summary

The Human Rights Council, in its resolution 29/18, extended the mandate of the commission of inquiry on human rights in Eritrea for one year to investigate systematic, widespread and gross violations of human rights in Eritrea with a view to ensuring full accountability, including where these violations may amount to crimes against humanity.

During the period under review, the commission noted no improvement with respect to the most critical human rights violations in Eritrea documented in its first report (A/HRC/29/42).

The commission has reasonable grounds to believe that crimes against humanity, namely, enslavement, imprisonment, enforced disappearance, torture, other inhumane acts, persecution, rape and murder, have been committed in Eritrea since 1991.

The commission concludes that, without substantial legal and institutional reform, Eritrea is not in a position to provide accountability for these crimes and violations. It therefore recommends that the Security Council refer the situation in Eritrea to the Prosecutor of the International Criminal Court for consideration, and that States Members of the United Nations exercise their obligation to prosecute or extradite any individual suspected of international crimes present on their territory.

* For detailed findings of the commission of inquiry, see A/HRC/32/CRP.1.

** The annexes to the present report are reproduced in the language of submission only.

GE.16-07497(E)

1607497

Please recycle

Contents

		Page
I.	Introduction	3
	A. Mandate	3
	B. Cooperation with the commission	3
	C. Methodology	3
	D. Applicable regional and international law	4
II.	Written submissions	4
III.	Recent human rights developments	6
	A. Introduction	6
	B. Current human rights concerns	6
IV.	Crimes against humanity	10
	A. Introduction	10
	B. Crimes against humanity in Eritrea	11
V.	Accountability	16
	A. Institutional accountability	16
	B. Individual accountability	17
	C. Accountability mechanisms	17
VI.	Conclusion and recommendations	18
	A. Conclusions	18
	B. Recommendations	19

Annexes

I.	Letter dated 7 December 2015 from the commission of inquiry addressed to the Permanent Representative of Eritrea to the United Nations	24
II.	Letter dated 24 February 2016 from the commission of inquiry addressed to the Minister for Foreign Affairs of Eritrea	25

I. Introduction

A. Mandate

1. The commission of inquiry on human rights in Eritrea was initially established for a period of one year by the Human Rights Council pursuant to its resolution 26/24. In that resolution, the Council mandated the commission to investigate all alleged violations of human rights in Eritrea, as outlined in the reports of the Special Rapporteur. The commission decided to focus the temporal scope of the investigation from 1991, when Eritrean entities took effective control of Eritrean territory.

2. On 26 September 2014, the President of the Human Rights Council appointed Mike Smith as chair of the commission and Victor Dankwa as a commissioner. Pursuant to Council resolution 26/24, the Special Rapporteur on the situation of human rights in Eritrea, Sheila B. Keetharuth, was also named a member of the commission. The commissioners serve in a non-remunerated, independent and expert capacity.

3. The commission presented its report to the Human Rights Council (A/HRC/29/42) at its twenty-ninth session.[1] The Council subsequently adopted, without a vote, resolution 29/18, in which it extended the mandate of the commission for one year, in order to investigate systematic, widespread and gross violations of human rights in Eritrea with a view to ensuring full accountability, including where these violations may amount to crimes against humanity.

B. Cooperation with the commission

4. The Human Rights Council, in its resolution 29/18, reiterated its call upon the Government of Eritrea to cooperate fully with the commission of inquiry. Like during the first mandate of the commission, the Government failed to respond to the commission's repeated requests for access. The Permanent and Deputy Permanent Representatives of the Permanent Mission of Eritrea to the United Nations did, however, accept to meet the members of the commission in New York. The Deputy Permanent Representative also forwarded new national legislation and media articles on Eritrea to the commission. The Head of the commission secretariat was also able to meet with Presidential Adviser and Head of Political Affairs of the People's Front for Democracy and Justice (PFDJ), Yemane Gebreab, in Geneva during the thirty-first session of the Council session, in March 2016.

5. Given its limited ability to meet directly with Eritrean officials, the commission has relied, where relevant, on information issued by the Government.

C. Methodology

6. The investigations, analysis and conclusions of the commission were guided by the human rights treaties ratified by Eritrea and customary international law.

7. The commission followed the methods of work described in its first report, including with regard to the protection of witnesses, investigative methods, its legal and factual findings, the historical background of Eritrea, the State's economic and political context and its legal framework.

[1] See also A/HRC/29/CRP.1.

8. The protection of witnesses and victims remains a central concern. Almost all witnesses and victims feared reprisals by the Eritrean authorities, either against themselves or their family members in Eritrea. For this reason, all information gathered by the commission during its investigations is confidential. The commission systematically sought the explicit and informed consent of victims and witnesses for the use of information pertaining to them.

9. The commission paid special attention to allegations of sexual and gender-based violence, including violence against women and girls, and assessed the gender dimension and impact of other violations. It also took into account the specific challenges posed in investigating allegations of sexual violence against both women and men.

10. In accordance with practices followed by previous United Nations commissions of inquiry and other fact-finding bodies denied access to the territory where the alleged violations were committed, the commission visited neighbouring and other countries to conduct interviews with those who had first-hand information. It also conducted interviews using audio and video means of communication.

11. On 9 November 2015, the commission issued an invitation for written submissions. The deadline for submissions was 15 January 2016.

12. The commission recalls that, although it is not a judicial body, it adopted a rigorous approach when analysing the information it collected. It assessed the credibility and reliability of each witness's evidence on the basis of the information available to it. Patterns of conduct described by the commission are based on numerous credible sources with direct information, supplemented with expert evidence, hearsay evidence and/or open source information.

13. Like similar United Nations commissions of inquiry, the commission maintained its standard of proof based on "reasonable grounds to believe".

D. Applicable regional and international law

14. Eritrea is a State party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and Peoples' Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the first two Optional Protocols thereto, the African Charter on the Rights and Welfare of the Child, the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105) of the International Labour Organization.

15. Although Eritrea is not a party to the Rome Statute of the International Criminal Court, many provisions of the Rome Statute reflect international customary law binding on Eritrea.

II. Written submissions

16. In response to its call, the commission received almost 45,000 written submissions, the vast majority of which were critical of the first report of the commission. Only eight submissions were sent from Eritrea.

17. To evaluate the submissions, the commission adopted a methodology to ensure that a statistically representative sample of more than 500 individuals from 16 countries would be contacted about their contributions.

18. Given the large number of group letters and petitions and the similar contents of most of the submissions, the commission has concluded that the campaign critical of its first report was well organized. While the commission is satisfied that a significant number of the letters were essentially voluntary, very few of those contacted had actually read the report, and many had been provided with sensationalized information about the commission's findings.

19. The commission found that the most fervent critics of its findings were Eritreans who had left the country before or immediately after 1991. A substantial number of correspondents stated that they had written primarily to voice their opposition to United Nations sanctions. These submissions were therefore largely based on either an erroneous understanding or deliberate misinformation about the United Nations sanctions regime. There appeared to be significant misinformation on other issues as well; for example, one correspondent stated that he had written to counter the commission's finding that "women were being raped on every Eritrean street corner".

20. Among the submissions, there were some letters that had been submitted involuntarily, namely, either because the author had been coerced or the letter had been submitted without the knowledge of the signatory. In one country, a significant number of contributors stated that they had not appended their names to a petition and that their signatures had therefore been forged. Of greatest concern were those witnesses in States where Eritreans tend to be guest workers rather than refugees or dual nationals, who informed the commission that Eritrean officials had made it known that Eritreans who did not write to the commission supporting the Government would not have their passports renewed. Without a valid passport, Eritrean workers would not have their visas renewed.

21. The commission was able to identify a number of common themes in the correspondence, including the commission's failure to visit Eritrea; the detrimental impact of United Nations sanctions on the humanitarian situation in Eritrea; that there was no rape in Eritrea; the failure of the commission to ensure implementation of the decision of the Eritrea-Ethiopia Boundary Commission on Badme; that indefinite military conscription in Eritrea was justified by the threat from Ethiopia; that there was no discrimination against women; the history of inter-ethnic and interreligious harmony in Eritrea; that there was no shoot-to-kill policy at Eritrean borders; that education and health care were free in Eritrea, unlike in other States; and that Eritrea had made progress on the Millennium Development Goals.

22. The commission notes that most writers stated that they visited Eritrea only occasionally. Many stressed the general sense of calm and order in Asmara. It is important to note, however, that the types of gross human rights violations in Eritrea documented by the commission in its first report are not committed on the streets of Asmara, but rather behind the walls of detention facilities and in military training camps. Torture and rape are not normally perpetrated in the open; the commission nonetheless gathered a large amount of corroborated evidence and observed the physical and emotional scars of such violence in people who have fled the country. The façade of calm and normality that is apparent to the occasional visitor to the country, and others confined to sections of the capital, belies the consistent patterns of serious human rights violations. After careful review, the commission concludes that the submissions do not undermine the findings described in its first report.

III. Recent human rights developments

A. Introduction

23. There have been several notable developments in Eritrea since the publication of the commission's report in June 2015. In February 2016, at the request of the Government, a delegation of the Office of the United Nations High Commissioner for Human Rights (OHCHR) undertook a working-level technical assessment visit to Eritrea. In March 2016, the Government of Eritrea released four Djiboutian prisoners of war. In addition, a delegation of the Office for the Coordination of Humanitarian Affairs visited Eritrea. The President of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea has also been invited.

24. The OHCHR delegation visited community courts and interacted with officials and judges. It also visited local community projects, Sembel prison and the rehabilitation centre in Asmara. OHCHR noted that the visit was short and not conducted in circumstances that allowed for a full assessment of the situation of human rights.

25. A number of foreign journalists were also invited to Eritrea. The commission notes that Eritreans have some access to international news, satellite television and the Internet, particularly in Asmara.

26. The Government provided the commission with documentation on four pieces of legislation issued in May 2015. The commission has however received conflicting reports on whether the new legislation is actually in force.

27. Large numbers of Eritreans continue to flee the country. In 2015, 47,025 Eritreans applied for asylum in Europe, slightly higher than the number in 2014, more than double the number of applications made in 2013 and nearly four times the figure for 2012.[2]

B. Current human rights concerns

28. The commission did not review each and every human rights violation reported to it, but rather had the aim to apprise the Human Rights Council of developments, or lack thereof, with regard to patterns of the gravest violations.

29. The commission prioritized gathering information on human rights issues from those who had recently fled Eritrea. The evidence collected revealed that the serious human rights violations documented by the commission in its first report persist. Eritreans continue to be subjected to indefinite national service, arbitrary detention, torture, enforced disappearances, reprisals for the alleged conduct of family members, discrimination on religious and ethnic grounds, sexual and gender-based violence, and killings. In addition, many of those subjected to enforced disappearances in the past remain unaccounted for.

1. Right to participate in public affairs

30. The delegation of Eritrea participating in eighteenth session of the Working Group on the Universal Periodic Review stated that national elections would not be held until "the threats to national security and sovereignty had been eliminated". The commission received no indication of plans to hold national elections.

[2] See Eurostat, Asylum quarterly report, 3 March 2015.

2. Constitution and the rule of law

31. It is widely accepted that the Constitution of 1997 has never been in force. In May 2014, President Isaias Afwerki announced the drafting of a new constitution. Presidential adviser Yemane Gebreab informed the commission that a committee had been established to consider drafting a new constitution. The commission did not receive any further detail about the process. Witnesses also confirmed that subordinate legislation issued by decree was still being implemented in an arbitrary manner. The legal vacuum continues to have far-reaching consequences for the protection of human rights in Eritrea. In addition, there is no independent judiciary, no national assembly and no other democratic institutions. In conclusion, the commission has found no progress in establishing the rule of law.

3. Military/national service programmes

32. In its first report, the commission documented a number of grave human rights violations in the State's military national service programmes, including its prolonged and indefinite duration, abusive conditions and the use of conscripts as forced labour. Indefinite military/national service is frequently cited by Eritreans as the prime reason for leaving Eritrea.

33. On 8 April 2015, Yemane Gebreab, at the Bruno Kreisky Forum for International Dialogue, announced that Eritrea intended to limit its military national service programmes to 18 months. Eight months later, however, the Government stated:

> Eritrea has no option but to take necessary measures of self-defense that are proportionate to the threat it faces. [...] This is the reason why National Service – limited by law to 18 months – remains prolonged.[3]

34. In February 2016, the Minister for Information, Yemane Ghebremeskel, confirmed that there were no plans to limit military service programmes, stating that "demobilization is predicated on removal of the main threat", and "You are talking about prolongation of national service in response to... continued belligerence by Ethiopia."[4]

35. The commission emphasizes that mandatory military national service is not necessarily a human rights violation. What distinguishes the military national service programme in Eritrea from those in other States is (a) its open-ended and arbitrary duration, which routinely exceeds the 18 months provided for in a decree issued in 1995, frequently by more than a decade; (b) the use of conscripts as forced labour in a wide range of economic activities, including private enterprises; and (c) the rape and torture perpetrated in military camps, and other conditions that are often inhumane.

36. In addition to a reserve army, in 2012, the Government created Hizbawi Serawit, often referred to as the "People's Army" or "the militia". Numerous witnesses informed the commission that Eritreans in their 60s and 70s are required to participate in the activities of Hizbawi Serawit. In sum, very few Eritreans are ever released from their military national service obligations.

---

[3] Shabait.com, "UNHCR Eligibility Guidelines: Factual Findings or Recycled Defamation?", 17 December 2015.

[4] Reuters, "Eritrea won't shorten national service despite migration fears", 25 February 2016.

4. Arbitrary detention, enforced disappearance, and torture

37. In its first report, the commission reported extensively on cases of arbitrary detention, enforced disappearance, and torture and other cruel, inhuman or degrading treatment in detention centres, military and civilian, official and unofficial.

38. The commission interviewed many Eritreans who had fled the country in the previous two years and reported that the violations described continue. Almost all of those arrested are detained in violation of fundamental rules of international law. Apart from those accused of minor common crimes or misdemeanours, most are detained without any form of judicial proceeding whatsoever. In the vast majority of those cases, the families of those detained receive no official information about the fate of their relatives. Lastly, many of those detained who spoke with the commission – either because they had been released or because they had escaped – described various forms of torture inflicted on them to obtain information or to punish them for alleged wrongs, or simply to create a general climate of fear.

39. On the basis of the information gathered, the commission found that the use of torture by Eritrean officials has been, and remains, both widespread and systematic in civilian and military detention centres.

5. Reprisals against third parties

40. In its first report, the commission described cases of reprisal against family members, friends and associates for the alleged conduct of a third person. Forms of reprisal include arrest, detention, fines, harassment, eviction and the confiscation of property. Those targeted included persons close to government critics within and outside the country, Eritreans alleged to have evaded or deserted military national service, Eritreans who left the country, Eritreans who escaped from prison and members of non-recognized religions.

41. The commission heard evidence that the punishment of third parties for alleged wrongs continues. With regard to the claims made by government officials that any punishment of third parties would be pursuant to legal proceedings on charges of aiding and abetting the alleged wrongdoer, the commission found no evidence to support this. On the contrary, all witnesses told the commission that there had been no judicial proceedings relating to their punishment.

6. Discrimination on religious or ethnic grounds

42. In its first report, the commission found that the Government held tight control over the freedom of religion. Only four religious denominations are recognized, namely, Eritrean Orthodox, Roman Catholic, Evangelical Lutheran and Sunni Islam. Religious practice by members of non-authorized religions is prohibited, and subject to systematic repression. Following a decree issued in 2002 requiring registration of all religious denominations seeking authorization to practice, a number of smaller religious groups attempted to register. To date, none have been registered.

43. The commission recognizes that a considerable degree of religious harmony exists between authorized denominations. Nonetheless, a number of witnesses informed the commission that discrimination against members of non-authorized religions continues. Government control of authorized religions also persists; for example, the commission received reports of recent arbitrary arrests and the detention of an unconfirmed number of priests, deacons and monks of the Eritrean Orthodox Church in and around Asmara, and other measures against other clergy members. Sources said that the victims had asked for the release of former Patriarch Abune Antonios.

44. The commission also received disturbing reports about discrimination against the minority Afar and Kunama ethnic groups. These reports require further investigation.

7. Sexual and gender-based violence

45. The commission found that sexual and gender-based violence persists in Eritrea. It heard evidence that some cases of rape committed by men against women in local communities had been adjudicated by courts, and the perpetrators had been sentenced to imprisonment. However, rape and domestic servitude in military training centres and in the army, and rape in detention, go unpunished. Women and girls who try to flee the country are at greater risk of sexual and gender-based violence. The commission documented recent cases of women and girls, arrested by soldiers guarding the border, who were forced to strip naked and subjected to acts of sexual violence.

46. Rapes often resulted in physical and/or mental suffering and pain and, in some instances, to unwanted pregnancies or sexually-transmitted diseases, such as HIV, consequences that in turn gave rise to further human rights violations and discrimination.

47. Detention continues to have a discriminatory effect on women, given that the special needs of pregnant and nursing mothers and women with children in detention continue to be neglected. In some recent instances, this has resulted in miscarriage or infant illness.

48. Harmful practices, such as the forced marriage of underage girls, including as a result of poverty, persist in Eritrea, even though the legal minimum age for marriage is 18 years. Discrimination against women intersects with other human rights violations. Girls continue to be removed from school and/or forced into marriages arranged by their families in order for them to avoid the harsh conditions and the possibility of sexual abuse in national service training centres. Female and child relatives of men who have been subjected to an enforced disappearance are often victims of various forms of discrimination.

49. Sexual violence against men continues in detention. Men's sexual organs are often targeted for beating or electric shock, in some instances with the intent of ensuring that the victim will no longer be able to reproduce.

8. Right to life

50. The commission found that, in Eritrea, the Government violates the right to life in two ways: (a) by committing extrajudicial killings; and (b) by subjecting Eritrean citizens to abysmal conditions of detention and national service, in which death is a foreseeable consequence.

51. The commission obtained reliable evidence that the shoot-to-kill policy at Eritrean borders targeting Eritreans attempting to flee the country is still in force, even though it is not implemented as rigorously as in the past. Other types of extrajudicial killings have also been confirmed; for example, on 3 April 2016, as military/national service conscripts were being transported through the centre of Asmara, several conscripts jumped from the trucks on which they were travelling. Soldiers fired into the crowd, killing and injuring an unconfirmed number of conscripts and bystanders.

52. The commission also received recent information about deaths in detention and in the course of military service owing to the State's callous disrespect for human life.

9. Freedom of expression, assembly and association

53. In its first report, the commission reported extensively on violations of freedom of expression, assembly and association. It heard evidence that suggested that there has been no material improvement in the enjoyment of the rights to freedom of expression, assembly and association.

10. Nakfa exchange

54. On 4 November 2015, the Government published a decree on the exchange of old Nakfa currency notes for new ones. Many witnesses raised concerns about this programme. Withdrawal is limited to small sums, regardless of the amount deposited. The commission notes that the programme is not being implemented in accordance with applicable legal notice, but believes it is too early to make definitive conclusions with regard to the impact of the programme on economic rights and the rights to property, privacy, legal certainty and the presumption of innocence.

11. Financial transparency and corruption

55. The Monitoring Group on Somalia and Eritrea, in its report on Eritrea submitted to the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea, pointed out that the Government of Eritrea continued not to disclose its budget appropriations, and that the State's budget was not publicly available (S/2015/802, para. 69). The commission observes that the Government's disregard for financial transparency and accountability reflects its indifference to the rule of law in other areas, and makes it more difficult to assess its progress in implementing economic and social rights.

56. Numerous witnesses indicated that petty corruption, bribery, trading in influence, illicit enrichment and abuse of authority are endemic in Eritrea. These forms of corruption have a direct impact on citizens' enjoyment of civil and political rights, and undermine the rule of law. Witnesses consistently linked corruption to exemption or early release from military service. They also described the use of conscript labour to benefit individuals or private enterprises, a particular form of illicit enrichment. According to other witnesses, officials also routinely accepted bribes to release individuals from detention and to obtain unofficial information about the location of detained relatives. Many others indicated that they had bribed border officials to turn a blind eye to their passage out of the country.

IV. Crimes against humanity[1]

A. Introduction

57. In its resolution 29/18, the Human Rights Council extended the mandate of the commission of inquiry to investigate systematic, widespread and gross violations of human rights in Eritrea, including where these violations may amount to crimes against humanity.

58. For the purposes of the present report, the commission will rely on the definitions of crimes contained in the Rome Statute of the International Criminal Court where they reflect customary international law. Where the Rome Statute is silent or incomplete, or where the commission is uncertain that the Statute reflects customary international law, the commission will supplement its discussion by reviewing relevant jurisprudence and other reliable sources of international criminal law. There is no statute of limitations with respect to crimes against humanity.

[1] For more detailed legal analysis, see A/HRC/32/CRP.1.

B. Crimes against humanity in Eritrea

59. Article 7 of the Rome Statute defines crimes against humanity as particular acts when committed as part of a widespread or systematic attack directed against any civilian population.

60. The commission previously concluded that the Government of Eritrea and the PFDJ had adopted totalitarian practices aimed at perpetuating their own power (A/HRC/29/42, para. 24). Central to the ruling leadership's campaign to perpetuate its hold on power has been its wholesale disregard for the right to liberty and security of its citizens. Specifically, Eritrean officials have committed the crimes of enslavement, imprisonment, enforced disappearance, torture, reprisals as other inhumane acts, persecution, rape and murder.

61. Enslavement has been committed on an ongoing, widespread and systematic basis since 2002.[5] Imprisonment, enforced disappearance, torture, reprisals as other inhumane acts, and persecution have been committed on a persistent, widespread and systematic basis since 1991. Rape and murder have been committed in a systematic manner since 1991.

62. Because State officials have relied so extensively on the commission of the crimes to establish and consolidate total control over the Eritrean population, the commission has determined that they have engaged in a persistent, widespread and systematic attack against the civilian population of Eritrea since May 1991.

63. Given that many of the victims of the above acts were, and still are, military national service conscripts, the commission has considered whether such conscripts may be classified as members of the civilian population for the purposes of crimes against humanity. It is of the view that, with the exception of defined periods,[6] Eritrea has not been engaged in an armed conflict as defined in international law. International humanitarian law, which distinguishes between combatants, combatants *hors de combat* and civilians, does therefore not apply. Given the particular nature of military national service programmes in Eritrea, conscripts have had an "inoffensive character" and therefore may be victims of an attack on the civilian population.

1. Enslavement

64. The international prohibition against enslavement is reflected in article 7(2)(c) of the Rome Statute, which defines the crime as "the exercise of any or all of the powers attaching to the right of ownership over a person". The commission relied on the interpretations of this definition by four international criminal tribunals, namely, the International Criminal Court, the International Criminal Tribunal for the Former Yugoslavia, the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia.[7] Acts of sexual slavery have also been addressed under the crime of enslavement.

---

[5] With the exception of the period from 10 to 12 June 2008, when Eritrea was involved in armed clashes with Djibouti.

[6] From May 1998 to June 2000 and from 10 to 12 June 2008.

[7] For the International Criminal Tribunal for the Former Yugoslavia, see *Prosecutor v. Kunarac*, IT-96-23-I& IT-96-23/1-I, judgment, 22 February 2001, paras. 518-543; and *Prosecutor v. Kunarac*, IT-96-23& IT-96-23/1-A, judgment, 12 June 2002, paras. 116-124; for the Special Court for Sierra Leone, *Prosecutor v. Taylor*, SCSL-03-01-A-1389, judgment, 26 September 2013, paras. 446-448 (citing the Kunarac judgments approvingly); for the International Criminal Court, *Prosecutor v. Katanga*, ICC-01/04-01/07-3436, judgment pursuant to Article 74 of the Statute, 7 March 2014, para. 976; and for the Extraordinary Chambers in the Courts of Cambodia, *Prosecutor v. Kaing*, 001/18-07-2007-ECCC/SC, appeal judgment, 3 February 2012, paras. 117-162.

65. Like the victims of the crime of enslavement in Germany during the Second World War, in Cambodia during the Khmer Rouge regime, and in the former Yugoslavia and Sierra Leone in the 1990s, the victims of the military national service schemes in Eritrea are not bought and sold on an open market. Rather, the powers attaching to the right of ownership in Eritrea are revealed by (a) the uncertain legal basis for the national service programmes; (b) the arbitrary and open-ended duration of conscription, routinely for years beyond the 18 months provided for by the decree of 1995; (c) the involuntary nature of service beyond the 18 months provided for by law; (d) the use of forced labour, including domestic servitude, to benefit private, PFDJ-controlled and State-owned interests; (e) the limitations on freedom of movement; (f) the inhumane conditions, and the use of torture and sexual violence; (g) extreme coercive measures to deter escape; (h) punishment for alleged attempts to desert military service, without an administrative or judicial proceeding; (i) the limitations on all forms of religious observance; and (j) the catastrophic impact of lengthy conscription and conditions on freedom of religion, choice, association and family life.

66. Here, the commission again wishes to stress that compulsory military national service is not necessarily a human rights violation or a crime against humanity. What distinguish military national service programmes in Eritrea from those in other States are the apparent underlying purposes of the programmes and the manner in which they are implemented.

67. The Government has on many occasions stated that prolonged military national service is necessitated by external threats, including the occupation by Ethiopia of Eritrean territory and United Nations sanctions. In the view of the commission, these do not justify the open-ended and arbitrary nature of the State's military national service programmes, nor do they explain the use of conscripts to carry out non-military work, including for State-owned and other enterprises.

68. The commission concludes that there are reasonable grounds to believe that, within the context of military national service programmes, Eritrean officials exercise powers attaching to the right of ownership over Eritrean citizens. It also determines that, despite the justifications for a military national service programme advanced in 1995, the programmes today serve primarily to boost economic development, to profit State-endorsed enterprises and to maintain control over the Eritrean population in a manner inconsistent with international law. The commission therefore finds that there are reasonable grounds to believe that Eritrean officials have committed the crime of enslavement, a crime against humanity, in a persistent, widespread and systematic manner since no later than 2002.

2. Imprisonment or other severe deprivation of physical liberty

69. The international prohibition against imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law is reflected in article 7(1)(e) of the Rome Statute. The commission stresses that the right to liberty is not absolute and that individuals may be arrested in certain circumstances and conditions. It focuses primarily on the inordinate number of detentions without any form of legal authorization or proceeding.

70. The vast majority of witnesses informed the commission that they had been arrested and detained arbitrarily, many repeatedly, or had had friends or relatives who had been detained for periods ranging from months to years.

71. Arbitrary detention in Eritrea is routine and indiscriminate. Indeed, in its first report, the commission concluded that Eritreans were arrested for reasons arbitrary to such an extent that no one could possibly identify the law that might have been broken (A/HRC/29/42, para. 41). When referring to detained individuals, Eritrean officials

regularly invoke treason and espionage. Treasonous behaviour appears to include conscientious objection to military service, practice of an unauthorized religion, applying for release from military service, attempting to escape military service, trying to leave the country, seeking information about the detention of a loved one, offending a high-ranking government or PFDJ official and having a family member accused of a perceived wrong. The Government has successfully stifled all forms of political dissent, and those who have spoken out in the past have generally disappeared, fled or been otherwise silenced.

72. Most witnesses told the commission that they had been arrested and detained without due process. They were not arrested on the basis of a warrant. They were not informed of the reasons for their detention. They were never charged or advised of procedural rights. They were never provided with legal assistance or an opportunity to contact their families; and, once in detention, they were never brought before judicial authorities or advised of the anticipated length of detention. This evidence was corroborated by former security officials who described their role in arbitrarily detaining Eritreans.

73. Courts do exist in Eritrea, and some observers have noted that community courts appear to address minor local disputes. The commission recalls, however, that, in its first report, it found that violations of the right to a fair trial in criminal proceedings had been particularly blatant (A/HRC/29/42, para. 39). The commission's concerns are particularly acute with regard to the Special Court of Eritrea, which was originally established to try those accused of corruption and embezzlement. The commission's findings on judiciary were based on evidence provided by both victims and former judges. The commission therefore concludes that even those detainees convicted pursuant to judicial proceedings have been deprived of their liberty in violation of fundamental rules of international law.

74. The evidence demonstrates that arrests and detentions in violation of fundamental rules of international law have been, and remain, central to an Eritrean State policy designed not only to discourage dissent but to suppress independent or critical thought, and to instil fear in the population, with the purpose of maintaining control over Eritreans in a manner inconsistent with international law. The commission concludes that there are reasonable grounds to believe that Eritrean officials have committed the crime of imprisonment, a crime against humanity, in a persistent, widespread and systematic manner since May 1991.

3. Enforced disappearances

75. Article 7(2) of the Rome Statute prohibiting enforced disappearances reflects customary international law applicable throughout the period covered by the reports of the commission.

76. Almost all witnesses reported that those detained had been subjected to enforced disappearance. Many described the steps that they had taken to obtain information about the fate of their relatives, and they did so despite the risk to themselves: (a) they sought information from their immediate local authorities, and from personal contacts; (b) they contacted area medical facilities; (c) they knocked on the gates of each known detention centre in their region; and (d) some even contacted senior government officials.

77. Witnesses informed the commission that friends and family of disappeared persons were never able to obtain information officially. That some were able to obtain information unofficially, for example by bribing a prison guard or from released fellow detainees, does not absolve the State of its obligation to provide official information.

78. The commission previously concluded that the Government has imprisoned many Eritreans in violation of fundamental rules of international law since 1991. In most cases, the Government refused to provide information on the fate or whereabouts of those detained. In doing so, Eritrean officials intended to deprive victims of the protection of the

law for a prolonged period of time and to create fear among their relatives, as part of a government policy to maintain control over the Eritrean population in a manner contrary to international law. The commission concludes that there are reasonable grounds to believe that Eritrean officials have committed the crime of enforced disappearance, a crime against humanity, in a persistent, widespread and systematic manner since May 1991.

4. Torture

79. The international prohibition against torture is reflected in Article 7(2)(e) of the Rome Statute.

80. Nearly all those interviewed by the commission who had been held in one of the numerous detention centres in Eritrea stated that they had been tortured. They also explained that physical and mental suffering was inflicted to extract information, to punish and to create an atmosphere of fear. The commission documented other forms of torture that affect women. Information on torture from victims was corroborated by former security officers who took part in the crime. Torture is also widespread in the military to punish and to instil discipline.

81. The commission concludes that the use of torture was, and remains, an integral part of the Government's repression of the civilian population. It therefore finds there are reasonable grounds to believe that Eritrean officials have committed the crime of torture, against persons under their control, a crime against humanity, in a persistent, widespread and systematic manner since May 1991.

5. Other inhumane acts

82. Article 7(1)(k) of the Rome Statute sets out, as a separate crime against humanity, other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

83. In its first report, the commission described the widespread and systematic practice of punishing Eritreans on the basis of "guilt by association", in particular relatives and associates of government critics (both within Eritrea and outside the country), persons who evaded or deserted military/national service, Eritreans who left the country, persons who escaped from prison and members of non-authorized religious denominations (A/HRC/29/42, para. 75).

84. Although reprisals against third parties in Eritrea may take various forms, of greatest concern to the commission are those involving arbitrary detention, enforced disappearance or murder.

85. The commission concludes that most forms of reprisal against third parties, and in particular imprisonment, enforced disappearance and murder, cause great suffering, as well as serious injury to mental or physical health. The commission considers that the specific nature of reprisals against third parties is not captured by the crimes of imprisonment, enforced disappearance or murder. It also determines that reprisals are integral to the Government's efforts to maintain its authority in a manner contrary to international law. The commission therefore concludes that there are reasonable grounds to believe that Eritrean officials have committed other inhumane acts, a crime against humanity, in a persistent, widespread and systematic manner since May 1991.

6. Persecution

86. The international prohibition against persecution is reflected in articles 7(1)(h) and 7(2)(g) of the Rome Statute.

87. The commission has concluded that the Government perceives freedom of religion as a threat and has thus controlled religious expression. At various times, State officials have persecuted Muslims, Jehovah's Witnesses and members of other non-authorized religious groups, commonly known as *Pentes*. They have also persecuted, at various times, members of the Afar and Kunama ethnic groups.

88. The commission therefore concludes that there are reasonable grounds to believe that Eritrean officials have intentionally and severely deprived Eritrean *Pentes* and some Muslims of fundamental rights contrary to international law. Muslims were targeted in particular in the 1990s, again in 2007-2008, and following the Forto incident in 2013. Jehovah's Witnesses have been targeted since May 1991, and other non-authorized religious groups since no later than 2002. The Afar and Kunama ethnic groups were particularly targeted in the period from 1998 to 2001. Persecution has been an integral part of the Government's efforts to maintain its authority in a manner contrary to international law. The commission therefore finds that Eritrean officials have committed the crime of persecution, a crime against humanity, in a widespread and systematic manner since May 1991.

7. Rape

89. The international prohibition against rape is reflected in article 7(1)(g) of the Rome Statute.

90. The commission documented a significant number of cases of rape committed against both men and women in military training and detention centres. In committing this crime, perpetrators took advantage of the coercive environment and, in many cases, also used force or threat of force. The rapes were committed as part of the widespread or systematic attack against the Eritrean civilian population.

91. The commission therefore concludes that there are reasonable grounds to believe that rape, a crime against humanity, has been committed both in the context of military national service and in detention centres since 1991.

8. Murder

92. The international prohibition against murder is reflected in article 7(1)(a) of the Rome Statute.

93. The commission documented a number of individual and mass extrajudicial executions by Eritrean authorities since May 1991, including the killing of disabled veterans in 1994, killings of Muslims in 1997, at Adi Abeito in 2004, and killings at Wi'a in 2005. It also heard evidence about an official shoot-to-kill policy used against Eritreans attempting to flee the country through land or maritime borders, although the evidence shows that the policy has been implemented less rigorously in recent years.

94. Additionally, numerous witnesses heard by the commission described deaths resulting from torture and the inhumane conditions associated with detention centres and military service. Given that the evidence indicates that many of these deaths were the result of a callous indifference to human life on the part of Eritrean officials, the commission concludes that Eritrean officials are also liable for these deaths.

95. The commission concludes that killings have been, in some instances, part of the Government's campaign to maintain its control in a manner inconsistent with international law, and in others, an inevitable consequence of the campaign. There are therefore reasonable grounds to believe that Eritrean officials have committed murder, a crime against humanity, in a systematic manner since May 1991.

V. Accountability

96. The commission recalls that, in its resolution 29/18, the Human Rights Council extended the mandate of the commission of inquiry to investigate gross violations of human rights in Eritrea with a view to ensuring full accountability, including where these violations may amount to crimes against humanity.

A. Institutional accountability

97. Eritrea is an authoritarian State. Despite some attributes of a democratic State, including a 16-member cabinet, a judicial system and regional governors and assemblies, political power in Eritrea is concentrated in the hands of the President and of a small and amorphous circle of military and political loyalists. The President appears to maintain shadow structures of advisers who make policy decisions outside the formal governing structures. Government ministers, who are not in the President's inner circle, do not debate or create policy, but merely enforce executive will. The leading members of the ruling PFDJ party and the commanders of the security forces appear to report directly to the President, and each group has responsibilities parallel to those of appointed government officials. More generally, individual proximity to the President is a more reliable indicator of de facto influence and control than official title.

98. In assessing de facto power in Eritrea and its relationship to the gross human rights violations and crimes described in the present report, the commission bears in mind that Eritrea is a highly militarized society, and that military and security personnel are disproportionately represented within the President's inner circle. Both the National Security Office and the military have a central role in affairs of State. The commission has reasonable grounds to believe that the National Security Office is responsible for most cases of arbitrary arrest, enforced disappearance and torture in official and unofficial detention centres.

99. The military in Eritrea is responsible for the numerous abuses associated with the Government's military service programmes, including in training camps and military detention centres and at Eritrean borders. Military detention centres reportedly exist wherever there is a military encampment. Military commanders are also responsible for the use of conscripts as forced labour. It is the commission's understanding that the commanders of the country's five military zones, all generals, hold considerably more power than civilian governors, given that they control economic assets and military prisons in their zones.

100. The distinction between the PFDJ and the Government is blurred at the highest levels, given also that the President is Secretary-General of the party. The PFDJ leadership reportedly controls parastatal enterprises in Eritrea, and thus benefits from the use of conscript labour in them.

101. The police appear to have less influence, although some witnesses described cases of illegal detention in police stations. That government ministers tend to have less de facto power than the military, national security and the President's inner circle does not preclude the possibility that individual ministers closely associated with the President could be liable for the acts described in the present report.

B. Individual accountability

102. Following a review of its evidence, the commission is satisfied that there are reasonable grounds to believe that particular individuals, including officials at the highest levels of the State and the PFDJ, and commanding officers, bear responsibility for crimes against humanity and other gross human rights violations.

103. In order to assist future accountability mechanisms, the commission compiled files on a number of individuals it has reasonable grounds to believe bear responsibility for the crimes it has documented. These files include the names of suspects, information about the potential suspect's position and a summary of evidence compiled by the commission relating to the potential suspect. With regard to individual statements, the commission did not include any information that could identify witnesses. In compiling the files, the commission bore in mind that, under customary international law, there are various types of liability for the crimes described above. Liability may be attached not only to those who commit crimes directly but also to individuals who plan, order or instigate them. In addition, both civilian and military superiors may be liable for crimes committed by their subordinates. Future accountability mechanisms may wish to consider whether a joint criminal enterprise existed during the period covered by the commission in its reports, or any part of that period; for that reason, the commission also took into consideration information on individuals who may have contributed to such an enterprise. Lastly, the commission recalls that individuals who aid and abet the execution of a crime may themselves also be liable for the crime, and that providing such assistance may take a variety of forms.

104. The files and other relevant information are safeguarded in the commission's confidential database. The commission has requested that the United Nations High Commissioner for Human Rights grant access to information for purposes of accountability where confidentiality and protection concerns have been addressed.

105. In addition, the commission compiled files on victims of enforced disappearances, which contain, inter alia, information on their whereabouts. The files will be handed over to the Working Group on Enforced or Involuntary Disappearances for further action where confidentiality and protection concerns have been addressed.

C. Accountability mechanisms

106. At the World Summit of Heads of State and Government in 2005, world leaders reaffirmed that each individual State has the primary responsibility for protecting its population from genocide, war crimes, ethnic cleansing and crimes against humanity.[9]

107. Similarly, the Rome Statute recognizes that the exercise of national jurisdiction is not only a right but also a duty of States. Given its findings with regard to the rule of law in Eritrea, however, the commission is of the view that, without substantial institutional and legal reform, there is no genuine prospect of the domestic judicial system holding perpetrators to account in a fair and transparent manner. Far-reaching reform would enhance the viability of national accountability mechanisms.

108. Many States Members of the United Nations could exercise jurisdiction over Eritreans accused of crimes against humanity who are in their territories, in accordance with principles of universal or passive personality jurisdiction. Pursuing such prosecutions would be consistent with the principles set out in the preamble of the Rome Statute which,

[9] See General Assembly resolution 60/1.

inter alia, recalls "that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes".

109. The commission concludes that neither a hybrid tribunal nor a truth commission would be a viable option in the current circumstances. A regional mechanism could, however, be created.

110. Eritrea is not a State party to the International Criminal Court. The Court may therefore exercise jurisdiction only over the crimes committed in Eritrea if the State were to ratify the Rome Statute or if the Security Council were to refer the situation in Eritrea to the Court.

111. Lastly, acting under Chapter VII of the Charter of the United Nations, the Security Council could also impose targeted sanctions on individuals suspected of international crimes.

VI. Conclusions and recommendations

A. Conclusions

112. **The commission finds that there are reasonable grounds to believe that crimes against humanity have been committed in Eritrea since 1991. Eritrean officials have engaged in a persistent, widespread and systematic attack against the country's civilian population since 1991. They have committed, and continue to commit, the crimes of enslavement, imprisonment, enforced disappearance, torture, other inhumane acts, persecution, rape and murder.**

113. **In the absence of a constitution, an independent judiciary or democratic institutions in Eritrea, the commission has found no improvement in the rule of law. The commission has heard of no plans to hold national elections. While the commission was informed about the establishment of a committee to consider drafting a new constitution, it has received no further details.**

114. **The commission finds that the gross human rights violations it documented in its previous report persist, including arbitrary detention, enforced disappearances, torture, killings, sexual and gender-based violence, discrimination on the basis of religion and ethnicity, and reprisals for the alleged conduct of family members. In addition, many of those subjected to enforced disappearance in the past remain unaccounted for.**

115. **While the commission notes the State's increased engagement with the international community, there is no evidence of progress in the field of human rights. Human rights violations are cited as the main motivating factor for departure by the consistently large number of Eritreans fleeing the country, including by the rising number of unaccompanied minors.**

116. **Eritreans continue to be subjected to indefinite military/national service. The Government has recently confirmed that there are no plans to limit its duration to the statutory 18 months. Conscripts are drafted for an indefinite duration of service in often abusive conditions, and used as forced labour.**

117. **Political power and control are concentrated in the hands of the President and a small circle of military and political loyalists. The commission has reasonable grounds to believe that the top levels of the National Security Office and the military are responsible for most cases of arbitrary arrest, enforced disappearance and torture. Military commanders are also responsible for abuses committed in the**

context of the Government's military service programmes and at Eritrean borders. The leadership of the party and the military also benefit from the use of military/national service conscripts as forced labour.

B. Recommendations

118. The recommendations made by the commission in its first report remain valid. The commission highlights below those recommendations that are specifically relevant to its new mandate, and makes new ones.

1. Government of Eritrea

(a) General recommendations

119. The commission of inquiry recommends that the Government of Eritrea:

(a) Implement fully and without delay the Constitution of 1997; any amendments thereto should be made in a transparent and participatory manner, and take into account the State's international human rights obligations;

(b) Respect the obligations prescribed by the international human rights treaties to which Eritrea is a party, and ratify and implement other international human rights instruments, including the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the United Nations Convention against Corruption and the African Union Convention on Preventing and Combating Corruption.

(b) Governance and administration of justice

120. The commission also recommends that the Government of Eritrea:

(a) Ensure the separation of powers among the legislature, the executive and the judiciary, and establish the rule of law;

(b) Adhere to the principles of the supremacy of law, equality before the law, accountability to the law and legal certainty, and procedural and legal transparency;

(c) Establish without delay an independent, impartial and transparent judiciary, and ensure access to justice for all;

(d) Ensure that court processes, including judgements, are transparent, open and accessible to the public, and transmitted to accused persons immediately;

(e) Bring into force the Penal Code, the Criminal Procedure Code, the Civil Code and the Civil Procedure Code of May 2015, and amend them to reflect all international human rights standards;

(f) Allow for the creation of political parties, and hold free, fair and transparent democratic elections at all levels;

(g) Establish an independent national human rights institution with a protection mandate, including to investigate human rights violations;

(h) **Permit human rights defenders and independent civil society organizations, including gender-specific organizations, to operate without interference.**

(c) Military/national service

121. **The commission further recommends that the Government of Eritrea:**

(a) **Discontinue indefinite military/national service by limiting it to 18 months for all current and future conscripts, as stipulated by the Proclamation on national service;**

(b) **Put an immediate end to torture and ill-treatment, sexual violence and the enslavement of conscripts;**

(c) **Provide conscripts with humane living conditions, including with regard to food, health care and shelter;**

(d) **Cease the practice of using conscripts, detainees and members of the militia and reserve army as forced labour;**

(e) **Establish an independent complaint mechanism for conscripts to raise allegations of ill-treatment and to obtain redress;**

(f) **Ensure that military commanders responsible for human rights abuses are held accountable.**

(d) Arbitrary arrest, detention and enforced disappearances

122. **The commission recommends that the Government of Eritrea:**

(a) **Put an end to the practice of arrests and detention carried out without legal basis, and release immediately and unconditionally all those unlawfully and arbitrarily detained;**

(b) **Provide information on the fate and whereabouts of all those deprived of physical liberty;**

(c) **Review all cases of detainees who have been convicted of an offence in judicial or similar proceedings but were not accorded the procedural rights guaranteed in the international instruments to which Eritrea is party;**

(d) **Provide immediately information on all prisoners of war, and release them as soon as possible;**

(e) **Allow access to detainees by legal representatives and family members;**

(f) **Close all secret places of detention;**

(g) **Improve the conditions of detention to bring them into line with international standards and, in particular, ensure access to medical treatment for all detainees;**

(h) **Ensure that solitary confinement remains an exceptional measure of limited duration;**

(i) **Allow independent monitoring of all places of detention with regard to both legality and conditions of detention;**

(j) **Immediately permit unhindered access by independent monitors, including the Office of the United Nations High Commissioner for Human Rights and other recognized organizations, to all places of detention, official and unofficial, to**

monitor the legality of detentions and the treatment of detainees and prison conditions, and allow them to conduct regular and unannounced visits, and act promptly on their recommendations.

(e) Torture and other cruel, inhuman or degrading treatment or punishment

123. The commission also recommends that the Government of Eritrea put an immediate end to the use of torture and other forms of ill-treatment, establish adequate complaints mechanisms and ensure that prompt and effective investigations are conducted into all allegations of torture and ill-treatment with a view to bringing perpetrators to justice.

(f) Discrimination on religious or ethnic grounds

124. The commission further recommends that the Government of Eritrea:

(a) Respect freedom of religion or belief;

(b) Put an end to the practice of arbitrary arrest and detention of individuals based on their religious beliefs, in particular followers of specific religious groups, such as Jehovah's Witnesses, Pentecostals and other non-authorized religious groups, and release immediately and unconditionally all those unlawfully and arbitrarily detained;

(c) Ensure the protection of all minority ethnic groups in Eritrea, in particular the Kunama and the Afar.

(g) Sexual and gender-based violence

125. The commission recommends that the Government of Eritrea:

(a) Adopt a comprehensive strategy to eliminate stereotypes and harmful practices that discriminate against women and girls, including forced marriage, and ensure that the minimum age of marriage, set at 18 years of age, is strictly enforced;

(b) Take measures to ensure de facto gender equality, and address all forms of violence and discrimination against women, including sexual and gender-based violence, particularly within State institutions, such as military camps and places of detention;

(c) During mandatory military training, prohibit the assignment of women and girls to officials' quarters for forced domestic servitude, and implement a zero-tolerance policy for sexual abuse in the army and in detention centres;

(d) Ensure that all forms of sexual violence are criminalized in national law, and take appropriate legislative and policy steps to establish complaint mechanisms and to ensure the prompt and adequate investigation, prosecution and accountability of perpetrators, including by strengthening the capacity of the criminal justice system;

(e) Adopt gender-sensitive procedures to avoid reprisals and stigmatization of survivors of sexual and gender-based violence by, inter alia, establishing special protection units and gender desks in police stations, and provide rehabilitation and support services, including safe houses, legal aid resources and health care;

(f) Ensure that national laws and policies comply with the State's international human rights obligations and are non-discriminatory by, inter alia, permitting prosecution of marital rape in all circumstances and abolishing legal provisions criminalizing consensual same-sex sexual activity.

(h) Reprisals against third parties

126. **The commission also recommends that the Government of Eritrea put an immediate end to the various forms of harassment and reprisals against relatives and associates of persons accused of wrongdoing.**

(i) Killings

127. **The commission further recommends that the Government of Eritrea put an end to extrajudicial killings, including of those fleeing the country.**

(j) Accountability

128. **The commission recommends that the Government of Eritrea:**

(a) **Ensure accountability for past and persistent human rights violations and crimes, including enslavement, imprisonment, enforced disappearance, torture, and other inhumane acts, persecution, rape and murder, through the establishment of independent, impartial and gender-sensitive mechanisms, and provide victims with adequate redress, including the right to truth and reparations;**

(b) **Ratify and implement the Rome Statute of the International Criminal Court;**

(c) **Cooperate with, and accept and implement the decisions of, any accountability mechanisms.**

2. **Human Rights Council**

129. **The commission recommends that the Human Rights Council:**

(a) **Renew the mandate of the Special Rapporteur on the situation of human rights in Eritrea, and request the mandate holder to, inter alia, promote and report on the implementation of the present recommendations, and provide the mandate holder with the necessary additional human and financial resources;**

(b) **Bring to the attention of relevant special procedures, for appropriate action, the human rights violations and crimes identified by the commission in its reports, including the situation of minorities, such the Kunama and the Afar;**

(c) **Keep the situation in Eritrea on its agenda, and invite the United Nations High Commissioner for Human Rights to report periodically on the situation of human rights;**

(d) **Transmit the present report to the General Assembly, the Secretary-General and the Security Council for follow-up on its recommendations;**

(e) **Support the establishment of a structure by the Office of the United Nations High Commissioner for Human Rights with a protection and promotion mandate, in particular to assist in ensuring accountability for human rights violations in Eritrea, especially where such violations amount to crimes against humanity.**

3. **Office of the United Nations High Commissioner for Human Rights**

130. **The commission recommends that the Office of the High Commissioner report annually to the Human Rights Council and other appropriate United Nations organs on the situation of human rights in Eritrea, and assist the Government of Eritrea in the implementation of the recommendations made by the commission, and those made at the sessions of the Working Group on the Universal Periodic Review and by the treaty bodies and special procedures.**

4. General Assembly

131. The commission recommends that the General Assembly put the human rights situation in Eritrea on its agenda.

5. Security Council

132. The commission recommends that the Security Council:

(a) Determine that the situation of human rights in Eritrea poses a threat to international peace and security;

(b) Refer the situation in Eritrea to the Prosecutor of the International Criminal Court;

(c) Impose targeted sanctions, namely travel bans and asset freezes, on persons where there are reasonable grounds to believe that the said persons are responsible for crimes against humanity or other gross violations of human rights.

6. African Union

133. The commission recommends that the African Union establish an accountability mechanism, under the aegis of the African Union and supported by the international community, to investigate, prosecute and try individuals reasonably believed to have committed crimes against humanity.

7. Member States and international organizations

134. The commission recommends that Member States and international organizations:

(a) Keep Eritrea under close scrutiny until consistent and tangible progress with regard to the situation of human rights is evident, and ensure the centrality of human rights in all engagement with the State;

(b) Insist on the implementation of the decision made on 13 April 2002 by the Eritrea-Ethiopia Boundary Commission on the delimitation of the border;

(c) Keep Eritrea on the agenda of the International Labour Organization and continue to address the issue of forced labour;

(d) Assist Eritrea in addressing serious legislative and institutional weaknesses by strengthening its judiciary, establishing independent institutions and reforming its security sector through bilateral and multilateral development cooperation, in accordance with the human rights due diligence policy on United Nations support to non-United Nations security forces;

(e) Provide Eritrean nationals seeking protection with refugee status in accordance with the provisions of the international law governing asylum, and in particular the Convention relating to the Status of Refugees;

(f) Exercise jurisdiction over crimes against humanity when any alleged offender is present on the territory of a Member State or extradite him or her to another State in accordance with its international obligations;

(g) Increase attention and the resources allocated to the situation of human rights in Eritrea by strengthening engagement with the Government with the aim of implementing the present recommendations and those made during the sessions of the Working Group on the Universal Periodic Review and by other human rights mechanisms.

8. Transnational corporations

135. **The commission recommends that transnational corporations operating or planning to operate in Eritrea conduct human rights impact assessments that specifically address the possibility that Eritrean contractors will rely on conscript labour, difficulties relating to freedom of association and expression in Eritrea, and the absence of financial transparency.**

Annex I

Letter dated 7 December 2015 from the commission of inquiry addressed to the Permanent Representative of Eritrea to the United Nations

Dear Mr. Ambassador,

Thank you for your willingness to engage with me and my fellow Commissioners on 2 November 2015. I hope we can build on this first encounter and continue the discussion.

As stated during our meeting, I would be grateful for any documentation your Government may wish to share with the Commission about developments noted by you during your statement delivered during the interactive dialogue with the Commission at the Third Committee of the General Assembly on 29 October 2015.

Our Secretariat received with thanks the Penal Code and the Criminal Procedure Code, and is looking forward to also receiving the Civil Code and its procedural code in due course.

Furthermore, we are interested in documentation and information about the drafting of a new constitution, as well as the duration of the national service for current and future conscripts.

We would also welcome any additional updates and positive developments you might wish to highlight with regard to the human rights situation in Eritrea since the finalisation of our first report.

I take this opportunity to reiterate our continued desire to visit Eritrea as stated during our meeting and in previous correspondence, most recently in my letter of 28 September 2015 to H.E. Mr. Osman Saleh Mohammed, Minister of Foreign Affairs. I hope that the Government of Eritrea will invite the members of the Commission and its staff to visit Eritrea, in line with Human Rights Council resolution 29/18.

I look forward to hearing from you in due course. For any clarifications I can be contacted through the Office of the High Commissioner for Human Rights or via email (coieritrea@ohchr.org).

I remain,
Yours sincerely,

Mike Smith
Chair
Commission of Inquiry
on Human Rights in Eritrea

His Excellency
Mr. Girma Asmerom
Permanent Representative of Eritrea
Permanent Mission of Eritrea
New York

Annex II

Letter dated 24 February 2016 from the commission of inquiry addressed to the Minister for Foreign Affairs of Eritrea

Excellency,

I write to you in my capacity as the Chair of the United Nations Commission of Inquiry on Human Rights in Eritrea.

As requested by the Human Rights Council (HRC), the Commission will present a written report at the thirty-second session of the HRC in June 2016, and at the seventy-first session of the General Assembly in September 2016.

I wish to reiterate our continued desire to visit Eritrea as stated in previous correspondence, most recently my letter to you of 28 September 2015 and the letter of 7 December 2015 to H.E. Mr. Girma Asmerom, Permanent Representative of Eritrea to the United Nations in New York.

We would be most grateful if the Government of Eritrea would extend an invitation to members of the Commission and its staff to visit Eritrea, in line with Human Rights Council resolution 29/18. Such a visit could be organised at any time prior to the finalisation of our report for the thirty-second session of the HRC.

I look forward to hearing from you in due course. For any clarifications I can be contacted through the Secretariat of the Commission (coieritrea *at* ohchr.org).

Please accept, Excellency, the assurances of my highest consideration.

Mike Smith
Chair, Commission of Inquiry
on Human Rights in Eritrea

His Excellency
Mr. Osman Saleh Mohammed
Minister of Foreign Affairs of Eritrea
Asmara
Eritrea